

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 291 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE H.L.GOKHALE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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GUJARAT ELECTRICITY BOARD

Versus

YARN PROCESSORS

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Appearance:

MR MD PANDYA for Petitioners

M/S TRIVEDI & GUPTA for Respondent No. 1

SERVED BY AFFIXING for Respondent No. 2, 3, 4, 5

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CORAM : MR.JUSTICE H.L.GOKHALE

Date of decision: 09/07/97

ORAL JUDGEMENT

Heard Mr.Vyas for the respondents. None present for the appellants. This appeal filed by the Gujarat Electricity Board seeks to challenge the order passed by the Civil Judge (Senior Division), Valsad in Special Civil Suit No. 182 of 1995 granting blanket injunction to the respondents, restraining the appellants from disconnecting power supply of the respondent firm till

the disposal of the suit. The appeal raises important question of law, and therefore, it is admitted. Mr.Vyas for the respondents has made his submissions and the same is being disposed of finally after hearing him which is done with his consent.

2. The respondent was given a bill of Rs.1,90,351/for consumption of power on 28-12-1994. It appears that the respondent on depositing Rs.57,106/under protest, filed Special Civil Application No. 361 of 1995 in the High Court. Thereafter Electrical Inspector was directed to check the meter again and the power supply was reconnected. The decision of the Electrical Inspector was considered by the Appellate Committee and the Appellate Committee gave its decision against the respondents. Being aggrieved by that decision and being threatened disconnection of power, the respondents filed aforesaid Special Civil Suit No. 182 of 1995 and obtained injunction as prayed for.

3. Mr. Vyas, learned advocate appearing for the respondents tried to defend the order by submitting that the Electrical Inspector had given a report in favour of the respondents and that the said report was not considered properly by the Appellate Committee. He has tendered compilation of the papers filed before the trial court. The report of the Electrical Inspector is annexed thereunder. That report in turn shows on a Page which is numbered as 65 that seals of the meter body were broken; internal wires were cut of, lock seal and the seal wires were also cut of. It was, thereafter, found that the meter was running fast. In the light of those findings, the Appellate Committee has given its finding. The Appellate Committee has considered the Laboratory Inspection Report and given its findings as follows:-

- 1) Meter body seals were tampered;
- 2) Seal Wire of meter body seals found broken.
- 3) The evidences are observed for substantial power theft.
- 4) The case is for power theft.
- 5) Consumption has increased after checking
- 6) Party had only say that as per Lab. inspection report, they had not done power theft, but they could not establish that there was no power theft in his

installation.

4. In view of these findings, the Appellate Committee came to the conclusion that this was a case of theft of power and that the bill of Rs.1,90,350-85 Ps. was correct.

5. The learned trial Judge has referred to the decision of the Appellate Committee and very strangely come to the conclusion that the Appellate Committee has not applied its mind to the facts of the present case. Obviously, the facts are contrary. Had the learned Judge looked into the report of the Inspector and findings given by the Committee carefully, he would not have come to the conclusion which he has arrived in Para 9 of the impugned order. In those circumstances, injunction was not called and that too a blanket one. For this reason, the appeal is allowed. The impugned order is quashed and set aside. The respondents will pay the balance of the claimed amount to the appellants within two weeks from today, failing which the appellants will be at liberty to disconnect the power supply.

6. Mr. Vyas submitted that appellants would like to approach higher forum and seeks time. He relies upon the judgment of the Supreme Court in the case of West Bengal State Electricity Board Vs. Fakirchand Rice Mills & Ors, reported in JT 1996(3) 569. That judgment lays down that in matters of alleged pilferage of electricity, at least half of the amount be directed to be deposited. In the present case, the appellants will not disconnect power supply for a period of two weeks, if the respondents deposit 50% of the balance amount within the aforesaid period and inform the appellant of taking further proceedings.

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